

IN THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

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UGOCHUKWU GOODLUCK NWAUZOR;  
FERNANDO AGUIRRE-URBINA,  
individually and on behalf of all those similarly  
situated,

Plaintiffs-Appellees,

v.

THE GEO GROUP, INC., a Florida  
corporation,

Defendant-Appellant,

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No. 21-36024

STATE OF WASHINGTON,

Plaintiff-Appellee,

v.

THE GEO GROUP, INC.,

Defendant-Appellant,

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No. 21-36025

**RESPONSE TO ORDER INVITING AMICUS BRIEF**

The United States files this response to the Court’s order of March 7, 2023, which invited the United States to submit an amicus brief in these appeals and instructed the United States to “advise [the court] if it wishes to submit a brief in response to this order and, if so, when it expects to file its brief.” Order at 2.

1. These appeals arise from suits brought by private plaintiffs and the State of Washington against GEO Group, Inc. GEO operates a facility in Tacoma, Washington, where federal immigration detainees are held. The plaintiffs here contend that work programs operated by GEO within that facility are required to comply with the Washington Minimum Wage Act, and that GEO did not compensate immigration detainees who participated in those works programs at the required rate. The district court granted judgment to the plaintiffs, and GEO appealed.

2. On March 7, 2023, this Court invited the United States to submit an amicus brief in these appeals. On the same day, this Court certified three state-law questions to the Washington Supreme Court. Two of those questions bear special mention here. The first is whether individuals in federal immigration detention at GEO's facility who participate in the facility's work program are "employees" subject to the Washington Minimum Wage Act. Cert. Order at 9-10. The second is, assuming that the Minimum Wage Act applies, "whether the [state law] applies to work performed, in comparable circumstances, by civil detainees at a private detention facility operated under a contract with the State." Cert. Order at 12.

3. In light of the Court's certification order, the United States intends to defer a decision on amicus participation in these appeals until the conclusion of the Washington Supreme Court proceedings on certification. One question the Court has certified may be case-dispositive on threshold state-law grounds, *see* Cert. Order at 10 (calling the first question a "determinative threshold issue"), which would obviate the

need for the Court to consider other issues that the United States might address.

Another question, if reached by the Washington Supreme Court, may inform the analysis of the various defenses that GEO has raised and which the Court has invited the United States to address. *See* Cert. Order at 12.

4. The Court’s certification order directs the parties to file a joint status report “when the Washington Supreme Court provides answers to the certified questions.” Cert. Order 17. The United States intends to file a further response to this Court’s order inviting an amicus brief within 30 days after the parties file that joint status report.

Respectfully submitted,

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## **CERTIFICATE OF COMPLIANCE**

This response contains 405 words. This response was prepared using Microsoft Word 2013 in Garamond, 14-point font, a proportionally-spaced typeface.

/s/ *Brad Hinshelwood*

Brad Hinshelwood